



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

(Section 59O)

BETWEEN

Mr L

Applicant²

and

Mr C

Subject³

The Director of Social Welfare⁴

Members of Guardianship Board constituted

Chairperson of the Board: Mr Charles Chiu Chung-yee

Member referred to in section 59J (3) (b): Ms Emily FUNG Wai-ying

Member referred to in section 59J (3) (c): Ms Pun Kun-lin

¹ Sections cited in this Order shall, unless otherwise stated, be under Mental Health Ordinance (Cap. 136) Laws of Hong Kong.

² S2 of Mental Health Guardianship Board Rules

³ S2 of Mental Health Guardianship Board Rules and S59N(3)(a) of Mental Health Ordinance

⁴ S2 of Mental Health Guardianship Board Rules and S59N(3)(c) of Mental Health Ordinance

Hearings at the Board: 23rd August 2004 and 24th August 2004.

Date of Reasons for Order: 24th August 2004.

Background

1. The subject, Mr C, was a 81-year-old man with dementia. He used to live with his wife and is taken care of by his wife. He was a retired civil servant and receiving about \$3,300 pension each month. The subject has savings over 1 million dollars which were held in his sole name accounts and joint name accounts with the wife. The subject has two self-owned properties. He has eight children who split into two camps, with the wife of the subject, the 4th son Mr H and the 3rd daughter Madam K of the one camp and the majority rest of the other camp (“Camp B”).
2. The two camps of family members were in conflict with each other over subject’s welfare plan, treatment plan and financial arrangements. The communications between the two camps of family member were declining since March 2004. The wife, with whom the subject has lived with, did not disclose the caring arrangement and financial matters of the subject to the children of Camp B of which the applicant Mr L is a member.
3. Camp B alleged that the attitude of the wife had changed after joining a Christian sect (“Church”) and was being manipulated by Madam K and Mr H. The wife cannot explain how she had spent the savings in past months and why she insisted the subject to see a private practitioner instead of Dr N of a Hospital Authority hospital. The wife and Madam K also insisted the subject to walk instead of using a wheelchair.

4. While the conflict escalated, the wife had even closed one of her bank accounts into which one of the sons of Camp B used to pay the children's monthly contribution for the wages of the domestic maid.

Mental health conditions

5. Mr C started to have poor memory in 1990. He was arranged to attend Department of Geriatrics at a Hospital Authority hospital in 1995. Mr L, the son-applicant arranged the subject to receive follow-up treatment at the memory clinic of another Hospital Authority hospital from 1996. As the 3rd daughter, Madam K held a different view on Mr C's treatment, she instead arranged the subject to attend the psychiatric treatment at a mental hospital from 2003.
6. Mr C was diagnosed as suffering from Alzheimer's disease. He was admitted to the mental hospital for in-patient treatment once in April 2003. According to the medical notes of the mental hospital, the subject once used a knife to destroy the door lock at home. Having a paranoid idea that his wife hid his bankbook, he threatened to kill his wife verbally and was sent to the mental hospital on 29 April 2003. After discharged, the subject attended day hospital of psychogeriatric day care unit for dementia until 4 December 2003. The subject subsequently re-joined the day care unit on 7 May 2004. The MMSE score of subject is 14 out of 30 on 7 May 2004. He has both poor memory and cognitive function with disorientation of time, place and person.
7. Mr C's physical conditions deteriorated after receiving a brain surgery in December 2003. The subject can only walk for a short distance slowly and unsteadily. He needed to use wheelchair. His activities of daily living

were totally dependent. He needed to use diapers all the day. The subject was receiving treatment from a private doctor for Parkinsonism as well as some nursing and rehabilitation services from Enhanced Home and Community Care Services since 27 March 2004.

Circumstances leading to application

8. According to the social enquiry report, Mr L, the youngest son of subject, applied for guardianship for the subject, his father, on 14 June 2004. His reasons for the applications were: “(a) his father was currently under the care of doctors bearing contrasting opinions on the medical condition. This has caused confusion in the management of his medication; and (b) in March 2004, Mr L was made aware that his father, while mentally incapacitated has lent \$120,000 to the 3rd daughter Madam K.” The applicant was, in sum, worried over disputes in respect of treatment and caring arrangement of the subject who was also suspected to be financially exploited.

9. After a month of Mr L’s application, he filed a withdrawal application to the Board. The reasons were: “(a) he was accused by his mother (the wife of subject) that he was targeting [at] their property, which was in fact totally deviated from his original aim of the application of Guardianship Order. His only aim was looking for the most suitable person to look after his father at this stage of his life in a sensible way; and (b) he cannot have any further conversation with his mother as she has refused to talk to him anymore and just directed him to talk through her lawyer since 15 July 2004.”

Recommendation of the Director of Social Welfare

10. After the investigation, the social enquiry report maker stated that: -

“..... Mr C’s family holds divergent views on Mr C’s need for Guardianship Order. It was unlikely that they will reach a consensus in a short period of time without professional intervention. To safeguard the wellbeing of Mr C, a mediator with statutory powers for a period of time, is considered helpful at the present stage.....”

11. In other words, the report maker recommended to appoint the Director of Social Welfare as guardian in order to protect and promote the best interests of the subject.

Hearings at the Board on 23 and 24 August 2004

ISSUES

12. In this case, the family members of the subject split into two camps. Camp B is in support of the application. They were the applicant, Mr L being the youngest son, the third son Mr KK, the eldest daughter Madam Y, the eldest son Mr M and the 2nd son Mr W. The opposing camp was led by the wife, Mrs C (“wife”), the youngest daughter Madam K and the 4th son Mr H. As to Madam H, the 2nd daughter, her position was not too clear and yet she vouched to the reporting officer that she preferred keeping a neutral stance so as to preserve the existing dialogue between her and her mother. However, reading her last fax transmission to the Board just before the start of the first day’s hearing, it is clear that she shared most of the concerns of

the siblings on the applicant's side.

13. Mr L had subsequently filed a notice of withdrawal on 19 July 2004. However, at the hearing, he wished to continue with this application.
14. The main question of this case is whether, given the care and concern now in place and as provided by the wife and Madam K, a guardian should be appointed for the subject. In other words, whether the needs of the subject can be satisfied by informal arrangements, as now exist, instead of receiving the subject into guardianship, which is more restrictive and intrusive.
15. The wife is legally represented by Mr J, a solicitor.

REASONING

16. The Guardianship Board has made the decision in this case based on the following observations, findings and rulings: -
 - (a) The two camps of family members, though genuinely concerned with the welfare of the subject, were in direct conflict with each other. The communication channel was virtually diminishing since March 2004 and came almost to a standstill sometime after the missing incident of the subject on the 26 May 2004. The evidence at the hearing had made it crystal clear that all caring and financial details of the subject were not disclosed by the wife's side to the applicant's side (i.e. Camp B) since in about March 2004. The two sides had, for long, failed to communicate at all on the medical and welfare needs of subject; they ignored each other with great suspicion. Even at the very last moments of the two

days' hearing, the wife did not move an inch from her perception that the applicant's act of applying was purely aiming at depriving her of her various rights, including right to manage the finance and take care of the subject. The wife even accused the motive of the applicant in applying was for material interests over the property of subject. The Board dismissed this accusation with distaste. Also, she (and Madam K) were very emotional and agitative during the hearing. She thought neither the applicant nor his side of her children have had any respect to her. The applicant's side, on contrary, believed that the wife's attitude had a fundamental change after joining the Church and was being manipulated by Madam K. The acute conflict between them have caused grave concern to the Board as obviously the confrontation of the close family members has undoubtedly caused detriments to the interests of the subject and his needs underserved. The wife had even, at the verge of frustrations, closed one of her bank accounts into which Mr L paid the children's monthly contribution for the wages of the domestic maid. The Board agrees with the recommendation of the maker of the social enquiry report that the Director of Social Welfare, being an impartial and independent public officer, should be appointed without delay in order to safeguard the welfare of the subject. Also, by the intervention of the public guardian, with her professional mediating skills, the family conflict could, as one would hope, be de-escalated and the communicating channel re-built.

- (b) The applicant's side had voiced out several areas of concerns. These were, in sum, four main areas, namely, first, the inadequate caring skill and knowledge, secondly, the negative influence of the Church with which the subject, the wife and Mr H were affiliated, thirdly, the negative influence of Madam K and fourthly, the inadequate financial

management.

17. Inadequate caring skill and knowledge

- (a) The evidence of Mr KK showed that the wife and Madam K were not receptive to the use of the wheelchair as provided by him. Also, Mr L's evidence also showed that it was inadequate for the wife, aged over 70, to help all by herself the subject to the door of the taxi during hospital visits. Yet, the wife said they never stopped using the wheelchair and that she was well able to help the subject, now aged 80 with mobility difficulty, to the taxi. Madam K said the way as described was within her design to take the subject to board on a taxi, both the maid and herself also helped. The Board's observation was that this was only one of the many examples where both the wife and Madam K were too convicted in their own beliefs of the correct ways of taking care of the subject and thus refusing "outside" assistance that lay the very heart of the cleavages in the family. With their rather limited and untrained experience, they were seen by the applicant's side as rendering inadequate and inappropriate care. Being criticized, they drew closer together and raised their self-defensive mechanism, finally giving up dialogue altogether. But, were their care inadequate and thereby causing detriments to the subject?
- (b) The Board's view to this question is that the care being rendered is inadequate. The Board based its observation on the circumstances as a whole. At this juncture, the Board had been referred to, in sum, four major incident: -

- (i) First, it was the delay of the sending the subject to hospital until 30 November 2003, consequent to which a major brain surgery was carried out on 1 December 2003 due to the subject's stroke. The Board did not have any hesitation to accept the evidence of Mr L that the wife and Madam K had caused the delay. The Board did not find for the wife's explanation that she would like to wait for the return of Dr M from a conference in Mainland before sending the subject to hospital. The more the wife explained the situation, the more the Board is driven to believe in her inadequacies in handling emergency situation.
- (ii) The second incident was the insistence of continuously consulting Dr LL, apparently a doctor with some training in paediatrics, by the wife and Madam K, the latter claimed that Dr LL was her friend. The Board would not repeat here the detail descriptions of how Dr LL thought the subject was suffering from Parkinson disease nor the wife and Madam K had eventually given up consulting Dr N, a reputable geriatrician after the initial consultation on 24 May 2004, as narrated by Madam Y in her first statement dated 19 August 2004. Rather, the Board's conclusion on this point is that the wife and Madam K had held fast to their own convictions and views, to the point of obstinacy and ignorance, that resulted in the interests of the subject being underserved. It is also clear from the so-called explanations of the wife and Madam K that their views were rather one-sided and subjective. They simply chose a deaf ear to whatever suggestions as advanced by the other side. This has, indeed, caused grave concern to the Board. Also, if the concern of the wife in not continuing to consult Dr N was due to the need of a total stoppage of intake of medicines prescribed by Dr LL for three

weeks, as required by Dr N, the Board fails to understand why the wife did not raise such concern of hers with Dr N for his medical advice. Further, the Board was exceedingly alarmed by the heavy criticism of Madam K on Dr N against a medicine proposed by the doctor on 24 May 2004 to regain all the memory power of the subject. She drew on the strength of her argument by saying that psychiatrist doctor of mental hospital had gone through the medical file of the subject and comparing the medicine recommended by Dr N with books etc and concluded that it would work against the heart conditions of the subject. She described in great details of the event and after her lengthy criticism slashed out, it was confirmed by Mr KK that in fact no names of any medicine was ever mentioned by Dr N during the consultation on 24 May 2004 when he was also present. On pressing, Madam K conceded that she did not have the name of the medicine at any time at all. In this matter, the Board noted there was an absence of consensus on the long-term treatment plan for the subject.

- (iii) The wife had accused the mental hospital as not willing to refer the subject to consult geriatric specialist in the Hospital Authority stream. To this, Ms S, the case medical social worker of mental hospital, who attended the hearing and confirmed that the medical team of the mental hospital has been always ready to refer the subject to geriatric clinic of a general Hospital Authority hospital in the vicinity. The family had not made any request so far.
- (iv) Madam K had gone for a mile to describe in detail how she managed to obtain occupational therapy sessions for the subject in the afternoons at the mental hospital. She described how she had

gone around seeking information from the social workers of the relating non-government agency, which has kept providing community home care services to the subject, nurses and physiotherapists and occupational therapists of the mental hospital and finally succeeded to secure those afternoon sessions for the subject. While the Board would praise her enthusiasm, it has made all the more clear that there is a need for a professional public officer to act as the guardian who would also become a point of reference of resources to assist the wife and Madam K, the main carers, to discharge their duties adequately.

18. The negative influence of Church

- (a) Mr L complained that there had been two occasions during early 2004 that there were no one at the home of subject when he attended the place, respectively in afternoon and at night. The wife confirmed on evidence that she has regularly taken the subject out to visit friends and relatives in the New Territories, about once a month. Mr L questioned as to where were such places to which the subject was taken as his view was that the subject did not like to stay long hours outside his home and that the mobility difficulty of the subject and the full-time use of diapers would make it not in the interests of the subject to travel far and long. When questioned about her involvement of her Church activities, the wife plainly refused to disclose anything apart from sweepingly saying that she never involved on anything after she was baptized on 26 May 2004. She said subject had made trouble in the Church before and therefore she did not bring him there ever since then. She categorically denied giving any donation to the Church. The Board then questioned why she still had to get baptised in May. She could

not give a convincing answer. Also, given the inconvenience of bringing the subject even to the Church, why then the wife would be able to continue her monthly excursions to her relatives and friends, including one Mrs P. The Board was completely kept out in the dark as to the involvement of the subject and the wife in the Church. As a person newly found faith, the Board wondered why not a cent of donation was ever made to the Church.

- (b) Mr L also complained on the missing of the subject on the day of the alleged baptism of the wife at the Church, i.e. the 26 May 2004. It was not disputed that the wife, through Mr H, started to affiliate with the Church since early 2003. The evidence further has established that despite telephone calls and messages left by Mr KK and Mr L on that day, the wife, Madam K and Mr H never picked up the calls or returned the calls. Mr KK reported it to the police. The subject was later returned to the abode at about 12:00 mid-night. During the face-to-face confrontation that followed between the two camps, the wife and Madam K refused to explain the itinerary of that day. What exactly happened on that day remained a mystery. After giving her first version to the Board, the wife was immediately reminded by Mr H about a second version of which she subsequently gave, and then Madam K gave a further version. At first, the wife said the subject was taken care by a friend, Mrs P, while she was being baptized. Later, she changed this version to one where it was Mr H who took care of the subject at his own home in New Territories West during her baptism ceremony. As the evidence emerged, Mrs P operated a health centre selling health food with a partner of hers. The Board did not have evidence that the health centre operated by Mrs P was the same one as mentioned in Mr M's statement (undated), which was closely associated

with the fellow Church goers and was introduced to Mr M by Mr H, but would add that Mrs P remained to be a mysterious character as it appeared that neither Mr H nor the applicant's side knew anything about her. The wife repeatedly told the Board that her monthly outings with subject has included visits to Mrs P. The only conclusion the Board is entitled to draw is that the wife had not been willing to disclose fully and frankly about her Church involvements and kept bringing the subject out often than necessary.

- (c) The evidence has established that during the Y2K crisis of 2000, Mr H had purchased from his Church fellow members a huge quantity of food which were stacked up at subject's abode for the subject and his wife. Mr H refused to state the amount spent for this, but the wife of the subject said it costed her \$5,900. Those food items were either already expired at that time or soon thereafter. Also, following the teaching of the Church, two plastic tins of kerosene were also stored at the abode.
- (d) During the epidemic SARS outbreak in 2003, the wife, through Mr H, acquired from a fellow Church member a so-called "ozone machine", which in fact was a air purifier. Mr W (the 2nd son), a mechanical engineer by occupation, said the machine was lacking a fire safety device and legally should not be put on market for sale.
- (e) Mr H had introduced a Chinese herbalist doctor to her mother, the subject's wife, through a connection from a Church member.

- (f) Mr H, being a member of the same Church, had played an important role to incite her mother, the subject's wife to invest, sometime after subject's surgery in December 2003, and so far as it was known, a sum of \$50,000 in a stock which was far from being a blue chip. According to Mr H, the stock was first introduced to him by another christian. Mr H admitted that the acquired shares were currently valued at about \$30,000, which reflected a potential trading loss.
- (g) There are two other matters of significance arising out of this transaction.
- (h) First, evidence adduced was not entirely clear as to the surrounding circumstances of the acquisition of those shares, but, according to Mr L, Mr KK and Mr W, the wife had never invested in stocks before. This was one of the salient changes of the wife after associating with the Church.
- (i) Secondly, it was adduced in evidence that, without acceptable explanations by Mr H and the wife, the bank's security account in which such stocks were held was opened in the joint names of Mr H and the wife. Bearing in mind Mr H's close association with the Church, which the applicant's side knew little about, the purpose of adding the name of Mr H to the security account remained a mystery.
- (j) Mr H confessed that he believed in the curing power of hydrogen peroxide (commonly known as "double-oxygen water"). He did purchase an hydrogen peroxide ointment in 2003 and applied it to the skin problem of the subject's foot.

19. The negative influence of Madam K

- (a) Mr KK gave evidence largely corroborated with that of Madam Y in her first statement dated 19 August 2004 regarding the intended sale of the abode by the wife under the influence of Madam K sometime in February 2003. Madam K gave a bare denial. Mr KK said that a distant relative heard about the news and congratulated on Madam K's expansion of her tutorial school business. During the ten face-to-face conversations between himself and his mother (the subject's wife), Mr KK had not got a definite reply from the latter that she would not sell the abode. To all these accusations, the wife put all the blame on herself. She told the Board that it was only her wishful thinking and there was nothing to do with Madam K. The Board does not accept this over-simplified answer. Again, this demonstrated how conflicting was the context in which this family was working through.
- (b) Regarding the alleged loan made to Madam K by her, the wife had surprised the Board in saying that she thought she just gave a ATM card of her personal bank account to Madam K and let her, in case of need, draw monies to a maximum of \$100,000 to \$110,000. That was her understanding of a loan to Madam K. However, she thought that no money was ever withdrawn so far. She never knew that, in fact, up to the present, over \$100,000 was drawn from her account by Madam K. This was admitted by Madam K during the hearing. This could be seen as one of the examples of how poor her ability was in handling finances. The Board does not agree, for obvious reasons, that the keeping of Madam K's title deeds of her own flat by the wife nor the will of Madam K made in 1989 was a sufficient security for the loans.

- (c) The keeping of the bank passbooks of the wife and the subject was yet another ground of complaint by the applicant's side. As usual, Madam K gave a bare denial and the wife put all the blame on herself. She said the bankbooks have never been kept by Madam K, it was only to avoid giving copies of those bankbooks to Madam Y to check the expenses that she made up the story. But, is this explanation true? In this regard, the Board accepts the evidence of Madam Y in paragraphs 4, 5 and 7 of her first statement of 19 August 2004. Further, Mr KK told the Board how his mother (the wife), in frustrations, complained to him during a day hospital transfer in May 2003 that she had given all her money to Madam K. The Board concluded that Madam K must have exerted a strong negative influence in the use of the subject's money all through recent years.

20. The inadequate ability for financial management

- (a) The wife claimed to have forgotten the purposes for which the two cashier orders totalling \$97,000 were issued by her both on 28 November 2003 from the joint bank account. Yet, to the surprise of the Board, she could readily remember a much earlier cashier order issued on 29 July 2003 from the same bank for a much lesser amount of \$17,000. That cashier order was issued to repay the money of Madam H in Canada, long kept by her on Madam H's behalf. The Board's only conclusion that could be drawn is that the wife had, for reason unknown, concealed the financial information from this Board.
- (b) The wife failed to explain why the yearly total expenses of the subject for year 2003 was as high as \$263,588 while that of year 2002 was only \$111,031. This was pointed out in Madam Y's second statement dated

23 August 2004.

- (c) The wife failed to explain why she would need to withdraw cash from the subject's bank account and the appointee account for the recent two to three months on an average exceeding \$22,000 a month, while the documented expenses as disclosed in the social enquiry report was just about \$14,000. This was also pointed by Madam Y in her said second statement.
- (d) The wife has transferred a huge sum of \$400,000 from the subject's sole name account to a newly opened joint names account with her on 13 March 2004, and the Board had serious doubt as to the capacity of the subject in so doing, particularly where the subject was certified unfit to make statement as early as 11 December 2003, having received a major brain operation on 1 December 2003 and his MMSE score was 14/30 as on 7 May 2004.

21. In view of the above findings and observations, the Board has decided that the informal arrangements could not serve the needs of the subject and the last resort of a guardianship order is urgently required in the interests of the subject. Also, due to the deadlocks between the two camps, it would not be appropriate to appoint a family member to be the guardian. The Director of Social Welfare is the only appropriate person to be so appointed.

DECISION

22. The Guardianship Board is satisfied on the evidence and accordingly finds:-

- (a) That the subject, as a result of dementia, is suffering from a mental disorder within the meaning of section 2 of the Ordinance which warrants the subject's reception into guardianship;
 - (b) The mental disorder limits the subject's capacity to make reasonable decisions in respect of a substantial proportion of the matters which relate to the subject's personal circumstances;
 - (c) The subject's particular needs may only be met or attended to by guardianship, and no other less restrictive or intrusive means are available as the subject lacks capacity to make decisions on his own welfare plan and finances; and
 - (d) The Board concluded that it is in the interests of the welfare of the subject that the subject should be received into guardianship.
23. The Guardianship Board dismissed the request to withdraw the application filed by the applicant dated 19 July 2004.
24. The Guardianship Board applied the criteria in section 59S of the Ordinance and was satisfied that the Director of Social Welfare was the only appropriate person to be appointed as guardian of the subject.

(Mr Charles CHIU Chung-yee)
Chairperson of Guardianship Board